Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Qwest Corporation for Forbearance	)	
Pursuant to 47 U.S.C. §160(c) Pertaining to	)	WC Docket No. 04-416
Qwest's xDSL Services	)	

OPPOSITION OF COMPUTER OFFICE SOLUTIONS, INC.

By :

Frank d' Aquino
Vice President

COMPUTER OFFICE SOLUTIONS , INC.
7266 SW 48 Street
Miami, FL 33155
(305) 663-5518
www.snappydsl.net

Dated: January 6, 2005

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Computer Office Solutions, Inc. d.b.a. SnappyDSL.net ("SnappyDSL"), by its vice president, hereby submits it Opposition to the November 10, 2004, Petition for Forbearance filed by Qwest Corporation ("Petition").[1]

STATEMENT OF INTEREST

SnappyDSL is a Florida based Internet Service Provider that provides wireline broadband and advanced Internet services. We first offered Internet services in 1994, primarily in response to filling the needs of our existing local customer base at a time when expertise and knowledge in Internet services was uncommon. In 2000 we rolled out our first broadband offering and by 2002 expanded our service territory to include Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, North Carolina, and South Carolina. Our varied customer base includes residential users and businesses of all sizes that require advanced and/or customized Internet services which are generally unavailable from either RBOCs or cable modem providers. Like most independent ISPs, the great majority of our advanced and customized Internet services are built upon a

[1] Petition of Qwest Corporation For Forbearance Pursuant to 47 U.S.C. §160(c) Pertaining to Qwest's xDSL Services, WC Docket No. 04-416 (November 10, 2004)

wireline broadband platform that requires the underlying transport and facilities provided by the RBOCs. Our future plans include the ability to continue serving and filling the needs of consumers in both our existing and new territories.

I INTRODUCTION AND SUMMARY

Computer networks and communications networks have been converging and evolving for the last forty years. During this time, the Commission has portrayed a fundamental understanding that appropriate stewardship of this convergence is vital to the public interest, as expressed both directly by the interests of consumers and indirectly by effects on the U.S. economy. Today's marketplaces and economic environment depend greatly on the stewardship so painstakingly crafted throughout the years.

Qwest's forbearance petition to the Commission boldly and even recklessly attempts to shatter the time-tested and balanced stewardship which has fostered both Qwest's own existence as well as the marketplace which it and other ILECs serve. Qwest's petition does not present sufficient data to support its claims that forbearance, either in full or in part, is required or even appropriate. Qwest's petition can be viewed as a greedy and short-sighted attempt to return to the days of monopolistic arrogance. The purpose of this opposition is to present discussion and data necessary to refute Qwest's petition.

II. DISCUSSION

Of primary importance to the growth and development of the broadband market is the issue of determining what regulations and safeguards are necessary in light of the fact

that the ILECs have both the ability and the incentive to act in an anti-competitive manner, sitting in the unusual place of being both supplier and competitor. ILECs provide the basic services on which enhanced service offerings are built. The purchasers of these basic services, known as Enhanced Service Providers (ESPs), often find themselves competing directly with the ILECs themselves. The rules which Qwest is subject to, including dominant carrier tariff regulation, rate averaging and resale at an avoided cost discount for its mass-market DSL services remain vitally essential to the goals of restraining anti-competitive behavior while fostering enhanced service marketplaces.

The existence of today's broadband market depends heavily on the public switched telephone network[2], which provides the underlying last-mile transport required for broadband services. Qwest's petition ineffectually points to the existence of (currently unregulated) broadband by cable as a reason for forbearance. But consider the findings from the U.S. Small Business Administration[3], in which the following facts are outlined and continue to be applicable:

> *"Small ISPs, which constitute the majority of ISPs nationally, are dependent upon transport over wireline carriers' facilities. An overwhelming number of ISPs have access arrangements with wireline carriers rather than cable providers, and 93 percent of all digital subscriber lines are provided by incumbent local carriers. As an ISP organization noted, a small ISP's options other than carriage on a wireline carrier's lines are virtually non-existent. Therefore, small ISPs are dependent on the incumbent wireline carriers to carry their signals. Even for small ISPs dealing mainly with the provision of broadband, the total reliance upon carriage over wireline carriers' facilities is undisputed.*

[2] "Traditional telephone providers and new entrants made improvements to their networks that built upon and leveraged existing public switched telephone network infrastructure. Our most recent data show that this incremental network buildout enabled large increases in high-speed Internet access subscribership." *FCC Notice of Proposed Rulemaking,* adopted: February 14, 2002

[3] Letter from the SBA Office of Advocacy to Chairman Michael K. Powell, dated 8/27/02 RE: Ex Parte Presentation in a Non-Restricted Proceeding Initial Regulatory Flexibility Analysis for Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Dkt. No. 02-33), at http://www.sba.gov/advo/laws/ comments/ fcc02_0827.html

This dependence is born from 80 years of government-sanctioned monopoly that enabled incumbent wireline carriers to construct a pervasive network to almost every home and business in the nation. Such a network will take decades to replicate, if it is possible to replicate at all, considering changes in the regulatory environment and the reluctance of local communities to installing new wires. The "last mile" of the network, which extends from a home or business to the central office of the incumbent wireline carrier, is particularly difficult for small alternative carriers to replicate or bypass, which grants the incumbent carrier a near monopoly in residential areas and a substantial economic advantage in business districts.

In the NPRM, the Commission appears to operate under the assumption that broadband is a completely separate service from voice telephone. Several commenters question this assumption, and claim that broadband is an extension of existing wireline telephony systems. One commenter states that no separate broadband network exists. Instead, wireline carriers are using the same copper structure that is used to carry voice telephony. Another commenter states that the voice telephony market and the broadband market are inextricably joined and that recent broadband investments are just on-going upgrades to existing networks.

There is merit to both of these comments because wireline broadband is currently using last-mile physical structure. Small ISPs do not have an alternative when it comes to reaching their wireline broadband customers; they rely upon carriage over wireline carriers facilities, as detailed in Computer II and Computer III. If the Commission removes the requirements for local carriers to carry the broadband traffic of small ISPs, incumbent wireline carriers have significant economic reasons to stop doing so. Without that carriage, small ISPs will face a harsh economic future, as Internet service migrates from dial-up to broadband.

Without the carriage requirement of Computer II and Computer III, control over the last mile gives wireline carriers an enormous bargaining advantage when dealing with ISPs, and the potential for discrimination by wireline carriers is a real concern. Small ISPs have no leverage and no alternatives but to take whatever deal is offered to them by the wireline carriers. As commenters noted, the potential for discrimination by the wireline carriers in the absence of the Computer II and Computer III safeguards is real, and a different regulatory treatment for broadband would encourage wireline carriers to close their networks or engage in anti-competitive and supra-competitive pricing.

If the incumbent wireline carriers refuse to provide broadband access services to small ISPs, one commenter estimates the cost to small ISPs at $8 billion in lost revenue. Such a blow would cripple the ISP industry and force hundreds of small businesses into bankruptcy, further endangering the prospect of

sound economic recovery. Furthermore, competition would be thwarted, as these small ISPs and other alternative providers are driven out of the marketplace. Should small ISPs cease operating, the Internet access market will be controlled by a duopoly – a wireline carrier monopolist that dominates in the provision of Internet services to businesses, and the cable monopolist that dominates in the provision of Internet services to residences."

Moreover, the SBA even more adamantly stated,

"The Commission should not rely upon cable as the sole source of competition to wireline broadband, because cable is not a perfect substitute for wireline broadband. The physical plants do not generally overlap; cable dominates the residential broadband market, while wireline carriers dominate the business market and have a presence in every single home in the United States.

If the incumbent wireline carrier is the sole source for wireline broadband communications, large numbers of small business consumers will have a single choice for broadband Internet service and will likely face higher rates, more restricted service, and delays on deployment of broadband service. Because of the incentive structure faced by the incumbent wireline carrier, rural consumers, and consumers in low-density areas would have little chance of receiving broadband services. Deployment, then, becomes a classic case of "cherry picking" and is not consistent with the Commission's goals."

For these reasons and more, the obligations from which Qwest is seeking forbearance are vitally necessary to protect consumers and serve the public interest. Consider the following:

1. Cable is not a complete substitute for wireline broadband. Both residential and business consumers concerned with the issues of reliability, stability and security recognize that only wireline based broadband will suffice. Cable modem network architecture[4] suffers a fundamental weakness - all signals go to all cable modem users within a particular area on a single line. A cut, break or other problems on a single line will bring down all users on that line. Although the first

[4] Cable Modems and ADSL, 1998 at http://www.dslforum.org/PressRoom/ adsl_vs_cable.html

user of a cable modem on a given line will have excellent service, each additional user creates noise, loads the channel, reduces reliability, and generally degrades the quality of service for everyone on the line. Intended or inadvertent wiretapping is facilitated by having access to multiple users at a single point of entry on the cable line. By contrast, xDSL's dedicated 'one-user, one-line' architecture provides an inherent defense against these issues.

2. Other broadband platforms do not offer viable substitutes for wireline broadband. Satellite broadband options are comparatively expensive and suffer speed limitations, particularly on data upload. Total Satellite/Wireless deployment at the end of 1993 was less than 1.3% of total high-speed lines[4]. Broadband over power line (BPL) deployment is virtually non-existent in the U.S., and long-term prospects are not good due to the many technical challenges.

3. Independent ISPs are the only providers of advanced broadband services demanded by consumers. Broadband is much more than just a fast connection to the Internet – it includes a host of advanced features are that are only provided by independent ISPs. Traditionally, citing the cost and complexity of delivering advanced broadband features, most if not all ILECs and cable providers have confined the provision of such features to only business consumers (at increased cost) or chosen not to provide them at all. Conversely, most independent ISPs have recognized the sizable demand from both businesses and residential consumers that need advanced features (e.g. for teleworkers, home-offices and techno-enthusiasts); and by virtue of their size and flexibility, most if not all

independent ISPs cost-effectively provision such features to both residences and businesses. Advanced broadband features include:

- *Multiple static IP addresses* – Static IP addresses enable and facilitate many activities in the broadband world; such as operating a web or mail server, creating a secure VPN connection, remotely controlling & managing computers across the Internet and more. The broadband offerings of independent ISPs are virtually the sole choice for residential consumers that need multiple static IPs. Most cable broadband offerings for residences do not include a static IP address, and certainly do not offer consumers the ability to competitively obtain multiple static IPs. The situation is similar for wireline broadband offerings by ILECs.
- *Port Unblocking* – Independent ISPs remain the sole source for consumers, particularly residential consumers, that require broadband service with unblocked access to vital communication ports. Driving this issue is the proliferation of spam across the Internet. The unanimous policies of cable providers and ILECs provide limitations on the flow of email traffic through their networks. Such “port 25 blocking” as it commonly is referred has the consequence of hindering legitimate consumers from running their own mail servers or having essential flexibility in their email capabilities. Most independent ISPs recognize the consequences of port 25 blocking and find other methods to control the spam issue without limiting the abilities of their customers.

- *Other advanced features* – Additional e-mailboxes, expanded e-mailbox sizes, domain name service(s), web site hosting, realtime virus protection, VPN (virtual private networks), bridge groups, remote access, and for so much more – independent ISPs are experts at flexibly meeting the advanced needs of consumers. The 'one-size fits all' approach of ILECs and the technical limitations of cable broadband simply leaves a vast territory of dissatisfied consumers who rely on independent ISPs to provide additional features on top of the basic broadband access.

One is tempted to ponder the effect on consumers and the broadband market under two hypothetical situations. The first - if all cable modem providers suddenly went out of business – in which case it is ventured to say that the impact would be minimal due to: (a) wireline broadband's technical attributes which can do everything that cable broadband can do and more, and (b) wireline broadband's penetration and ability to reach virtually all areas served by cable, and (c) the extensive intramodal competition from many wireline broadband ISPs under the current regulatory climate would assure competitive prices and continuing innovation.

On the other hand, pondering the hypothetical scenario in which all wireline broadband providers went out of business, it is ventured to say that the effect on consumers and the broadband market would be devastating for the following reasons: (a) cable penetration is lesser than that of wireline broadband and would leave vast numbers of consumers – especially businesses- without broadband, and (b) prices would soar and innovation grind to a halt as competition becomes virtually non-existent primarily due to

independent ISPs inability to get wholesale broadband components from cable providers, and (c) consumers would suffer greatly as they could no longer get the technical attributes and advanced services afforded by wireline broadband.

Qwest also asks common carrier relief on the basis that they do not have market power in broadband transmission. Such a claim is contrary to data presented presented elsewhere and summarized as follows: xDSL (wireline broadband) is the fastest growing broadband technology; xDSL already accounts for a substantial share of the broadband market; xDSL is already a market leader in at least two states and will soon lead in many other; xDSL has no technological substitute; and ADSL is the only technology of choice for many consumers.

Interestingly, Qwest's petition does not address any specifics with regard to the business market. All references are to either the residential market, or to aggregate data which considers both residences and only "small businesses". But what about mid and large businesses? The SBA recognized such consideration is essential to any effective policy/ regulation changes, and recently commissioned a study[5] which suggests that the "small businesses" previously referenced in the aggregate data for broadband consumption primarily consist of home-offices and other non-employer based businesses in residential areas. This leaves out an entire market segment, which the study asserts as follows:

> 1. "*While the FCC collects voluminous data from telecommunications service providers, these data are often too aggregated to provide insight into small businesses' use of telecommunications services. To the extent that public*

[5] "*A Survey of Small Businesses' Telecommunications Use and Spending*" by Stephen B. Pociask, Telenomic Research, LLC for SBA Office of Advocacy, Release Date: March 2004.

data for market segments exist, it is limited primarily to the residential customer market segment."

2. "*The lack of accurate and comprehensive data on small business use of telecommunications may leave policymakers guessing about how market segments are affected by legislative and regulatory actions*."

3. "*Determining whether these regulatory and public policy changes adversely affect small businesses requires vastly more information on small businesses' telecommunications use than is available today from public sources*."

If data does not exist for an entire market segment, how can Qwest's petition legitimately claim that the forbearance criteria have been fully satisfied?

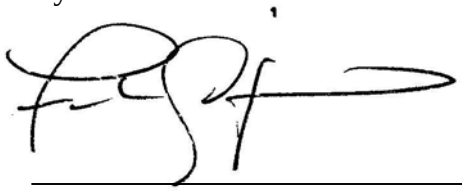
IV. CONCLUSION

Qwest's petition seeks to irreversibly harm consumers, the public interest and the broadband marketplace. The Commission should deny Qwest's petition in its entirety and in all parts.

Respectfully submitted,

Computer Office Solutions, Inc.

By its Vice President:



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